2003

Aaron Raiser v. Brigham young University : Brief of Appellant

Utah Court of Appeals

Aaron Raiser; appellant pro se.
Erik G. Davis; attorney for appellee.

In The Utah Court of Appeals

Aaron Raiser, Plaintiff, Appellant	:	Brief on Appeal
v.	:	20030517-CA
Brigham Young University, Defendant/Appellee	:	Priority #15

Brief of the Appellant

Appeal from a final order from the Fourth Circuit Court, Provo, Utah

Aaron Raiser, Pro Se
P.O. Box 4870
Ontario, Ca 91761

General Counsel
Erik Davis
A-357 ASB
Provo, 84602

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Jensen v. Redevelopment Agency, 951 P.2d 735 (Utah 1997) .

Marsh v. Alabama, 326 U.S. 501 (1946).

St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194 (Utah 1991) .

United States v Miami Univ. 91 F Supp 2d 1132 (SD Ohio 2000).

Willowbrook v. Olech, 528 U.S. 562 (2000).

Statement of Jurisdiction

Jurisdiction is correct pursuant to *Utah Code Ann. § 78-2a-3* (2) *(j).*

Statement of Issues

Is there a breach of contract when one party (B) commits intentional torts against the other party (A), injuring party A's right to enjoyment of the contract?

Is there a breach of good faith and fair dealing when one party (B) commits intentional tort upon intentional tort against the other party (A), injuring party A's right to enjoyment of the contract?

Is not the duty to abide by the laws of the land so as to not interfere with a person's right to enjoy the fruits of the contract implicit in any contract?

Does not the trial court's holding - that a party to a contract can break the laws of the land to interfere with a contract, simply because the contract does not forbid it – set a dangerous precedent?

Standard of Review

Standard of Review for each issue is set forth in *St. Benedict's Dev. Co. v. St. Benedict's Hosp.*:

> When determining whether a trial court properly granted a rule 12(b)(6) motion to dismiss, we accept the factual allegations in the complaint as true and consider them and all reasonable inferences to be drawn from them in a light most favorable to the plaintiff. *Colman v. Utah State Land Board*, 795 P.2d 622, 624 (Utah 1990); *Lowe v. Sorenson Research Co.*, 779 P.2d 668, 669 (Utah 1989). In light of the standard of review, we state the facts in a light most favorable to the party against which the rule 12(b)(6) motion was brought. See *State v. Verde*, 770 P.2d 116, 117 (Utah 1989). Because the propriety of a 12(b)(6) dismissal is a question of law, we give the trial court's ruling no deference **[**3]** and review it under a correctness standard. *Lowe*, 779 P.2d at 669 (citing *Atlas Corp. v. Clovis Nat'l Bank*, 737 P.2d 225, 229 (Utah 1987); Kimball v. Campbell, 699 P.2d 714, 716 (Utah 1985)).

Statutes

Utah Code Ann. § 70A-1-203. *Obligation of good faith*

"Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement."

Statement of the Case

I. Nature of the Case

This is a breach of contract case arising out of appellee's commission of intentional torts against appellant, injuring appellant's right to enjoyment of the contract. The injury and suffering arising out of the commission of said torts has become so great that appellant maintains a breach of contract exists.

II. Course of proceedings

Appellee filed a motion to dismiss for failure to state a claim.

III. Trial Court Disposition

Trial court gave the motion to dismiss to the appellee stating the contract did not forbid appellee from committing torts against appellant and reasoned that a contract can not be enlarged to included terms not included in the original contract.

Trial court referred to the torts as "harassment" by the appellee's police and completely overlooked the other torts committed by the non-police in arriving at its decision.

Appellant filed a motion to reconsider and a motion to amend the complaint. Neither were allowed.

IV. Statement of Facts

Appellant is an alumnus of BYU.

Starting in 1993 appellant was subjected to questionable and harassing treatment by appellee's BYU police.

Appellant was subsequently subjected to a false arrest in 1997 which was admitted to be false by its general counsel. Appellant sued. Appellee settled agreeing to allow appellant to sign up and take 10 classes for free during spring and summer term over a 10 year period. That said contract (Appendix A) exists is not in dispute.

Despite the court settlement and assurances from appellee that the conduct of the BYU police would cease, the conduct did not cease. Said conduct towards of the BYU police is motivated by ill-will.

Subsequent to the court settlement, appellee continued to commit torts against appellant in the form of two (2) defamatory articles published by the school newspaper, the first admittedly was a fabricated police beat story of and concerning appellant wherein the police told the student body and other readers, without basis, to "use caution" around appellant. The VP of student life required a retraction article to be published 3 months later.

The second defamatory article stated appellant had been convicted of criminal trespassing which was false.

Appellee's police detained, in violation of the 4th and 14th amendments, appellant on numerous occasion without cause on and off campus.

Appellant returned to BYU as a student spring '02. The latter 2 false imprisonments occurred when appellant was a student attending class at BYU during 2002.

The BYU police supervise the security guards and showed them a picture of appellant and told them to report him on sight. One student security guard obliged and the police came and detained (false imprisoned) appellant. This occurred in spite of the fact that appellant was a student there and had done nothing illegal. (Walking through the hall of an open building)

Subsequently, police issued an advisory to the chemistry building to report appellant on site and appellant was false imprisoned, not being allowed to leave, until the officer called to the scene spoke at length with the appellant. This occurred despite the fact appellant was a student there and despite the appellant not having violated any rule or law.

Further, it was frustrating to the appellant to have to be subjected to the torts, said injury resulting from these torts being complicated by the

memory of the false arrest and sexual assault on appellant. Moreover, the police specifically singled appellant out for these false imprisonments.

The most blatant abuse heaped upon appellant while a student there was when a security guard, supervised by the BYU police, approached a classmate in appellant's Computer Science 460 class spring 2002, said classmate being a former roommate and friend, and began telling classmate ten things that police dispatch read to him concerning appellant, each item being confidential and sensitive information generally not given out without a specialized request. Said information was highly damaging to the friendship of appellant and former roommate and was extremely upsetting to say the least. It interfered with appellants coursework, ability to study, and appellant was so upset he could not take the final exam in the same room with the former roommate and ended up taking the exam 2 hrs. prior to the final exam by permission of the professor. Subsequently, former roommate would not work in the same lab as appellant.

Appellant believes that the police are singling him out for such treatment and likely is due to the settlement that vindicated appellant in the false arrest incident.

Appellant was so shook up by the incidents along with the long history of abuse by the appellee towards him that he maintains a breach of good faith and fair dealing in contract exists.

Summary of the Argument

Appellant's right to enjoy the fruits of the contract was injured by the appellees's intentional torts against Appellant, and the criteria outlined in for breach of good faith and fair dealing in *St. Benedict's Dev. Co. v. St. Benedict's Hosp.* is satisfied.

Detail of the Argument

I. Good Faith and Fair Dealing Criteria

The criteria for a breach of good faith and fair dealing is set forth in *St. Benedict's Dev. Co.:*

> In this state, a covenant of good faith and fair dealing inheres in most, if not all, contractual relationships. See, e.g., *Beck v. Farmers Ins. Exch.*, 701 P.2d 795, 798 (Utah 1985). … Under the covenant of good faith and fair dealing, each party impliedly promises that he will not intentionally or purposely do anything which will destroy or injure the other party's right to receive the fruits of the contract. *Bastian v. Cedar Hills Investment & Land Co.*, 632 P.2d 818, 821 (Utah 1981); *Ferris v. Jennings*, 595 P.2d 857 (Utah 1979). A violation of the covenant gives rise to a claim for breach of contract. *Beck*, 701 P.2d at 798.

St. Benedict's Dev. Co., at 200.

It appears then that a breach of good faith and fair dealing occurs when a 1) party to a contract 2) (a) intentionally or (b) purposely does

anything which will 3) (a) destroy or (b) injure 4) the other party's right 5) to receive the fruits of the contract. *St. Benedict's Dev. Co.,* at 200. Each of these are in turn analyzed in light of the facts of the case at bar.

II. Good Faith and Fair Dealing Criteria applied to the instant case

A. Party to a Contract

Appellee is a party to a contract at center of this case. See Appendix A – *Settlement Agreement.*

B. Intentionally or purposely does anything

The torts committed by the appellee against appellant are intentional acts. See *Amended Complaint* (Appendix D) False Imprisonment ¶¶ 28 (a), (c); 29 (b), (c); Defamation ¶¶ 13-20,22-26 ; Breach of Confidentiality ¶¶ 31-33; Civil Rights Violations ¶¶ 28 (a), (c); 29 (b), (c) , 13-20, 22-26, 31-33; Family Education and Right to Privacy Act violations ¶¶ 22-26, 31-33; Intentional Infliction of Emotional Distress ¶¶ 13-20, 22-26, 31-33. See *Complaint* (Appendix B) False Imprisonment ¶ 29 (b), (c); Defamation ¶¶ 13-21,22-26 ; Breach of Confidentiality ¶¶ 31-33; Civil Rights Violations ¶¶ 29 (b), (c) , 13-20, 22-26, 31-33; Family Education and Right to Privacy Act violations ¶¶ 22-26, 31-33; Intentional Infliction of Emotional Distress ¶¶ 13-20, 22-26, 31-33. See also Prosser, Wade & Schwartz's, *Torts,* 10th edition, (2001) (false imprisonment is an intentional tort, *Id.* pp. 37-47;

defamation (an intentional tort and libel per se as alleged in the complaint/amended complaint; defamation requires a purposeful act) is a tort, *Id.* pp. 833-936; Intentional Infliction of Emotional Distress, *Id.* pp. 47-63; breach of confidentiality (as alleged in the complaint/amended complaint) resulted from purposeful acts, *Id.* pp. 954-958).

Additionally, appellant has alleged these acts were intentional. See *Amended Complaint* (Appendix D) ¶¶ 43-47; See *Complaint* (Appendix B) ¶¶ 43-47.

C. Which will destroy or injure

Torts injure. The word tort derives from (in part) the French word tort, which means injury or wrong. *Torts*, id at p. 1. Appellant has alleged that the torts committed by the appellee have indeed injured appellant. See *Amended Complaint* (Appendix D) ¶¶ 7, 8, 21, 26, 32-33, 35, 37; See *Complaint* (Appendix B) ¶¶ 7, 8, 21, 26, 32-33, 35, 37.

In injuring appellant, his right to enjoy the contract is injured.

D. The other party's

Appellant is the other party to the contract. See Appendix A – *Settlement Agreement.*

E. Right to receive the fruits of the contract

Being party to the contract appellant has a right to receive the fruits of the contract.

The fruits of the contract in this case is the right to attend appellee's place of business for educational purposes free from injury caused by torts being committed against him by appellee. The academic environment requires some degree of solitude and should be a place where a student can concentrate on their studies free from torts and *the fear of torts* being committed upon them.

Appellant argues that obedience to the laws of the land so as to not interfere with a party's enjoyment of the contract is *implicit* in every contract. The trial court, in its *Ruling* (Appendix C) and , implicitly has held that a party to a contract can break the laws of the land - when such language to prohibit the breaking the laws of the land is not explicitly in the contract – and can break the laws of the land as such to get out of the contract. Such a holding is unwise. (The trial court was able to do this by characterizing the torts as harassment – discussed below)

Appellant has been defamed by appellee on two occasions which damaged his reputation among the student body and faculty, caused emotional distress and injured and damaged the fruits of the contract and the enjoyment thereof.

Appellant has been singled of by appellee's police for false imprisonment on numerous occasions. This has injured the right to benefit from the contract as Appellant does not want to suffer tort against him simply by being on campus.

Appellant has had violation of confidentiality committed by a security guard who works under the police approaching a classmate, former roommate and friend in a computer lab and beginning a character attack on appellant, highly disrupting appellant's ability to study and succeed in his schoolwork.

Appellant's right to the benefits of the contract has therefore been injured.

III. Acts of the appellee constitute torts

A. False Imprisonment

False Imprisonment occurs when a defendant intentionally confines another person against their wishes and the person being confined is aware of the confinement.

Appellant was confined against his wishes by appellee and was aware of the confinement. See *Amended Complaint* (Appendix D) ¶¶ 29 (b), (c); See *Complaint* (Appendix B) ¶¶ 29 (b), (c).

Appellee had no legal basis for the false imprisonment.

B. Defamation

Defamation occurs when a defendant publishes false information to another, of and concerning the plaintiff, tending to cause damage to the reputation of the plaintiff.

Appellant was defamed by a fabricated police beat article printed in appellee's newspaper. Said article was of and concerning appellant, was false, and tended to damage the reputation of the appellant. See *Amended Complaint* (Appendix D) ¶¶ 13-20; See *Complaint* (Appendix B) ¶¶ 13-20. When a student's reputation is damaged in the eyes of fellow peers it harms the educational experience.

Appellant was defamed (libel per se) in an internet article printed by appellee's newspaper stating appellant had been convicted for criminal trespassing when in fact he had not been. See *Amended Complaint* (Appendix D) ¶¶ 22-26; See *Complaint* (Appendix B) ¶¶ 22-26.

C. Breach of Confidentiality

Breach of Confidentiality is actionable at common law. See Prosser, Wade & Schwartz's, *Torts,* 10th edition, (2001) p. 954.

Appellant had confidential information (police information, school disciplinary information) given out to a classmate and former roommate and friend with no legal basis for so doing and against governmental and school

policy. Said information being given out injured appellant. See *Amended Complaint* (Appendix D) ¶¶ 31-33; See *Complaint* (Appendix B) ¶¶ 31-33.

D. Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress requires four elements:

(1) The conduct must be intentional or reckless;

(2) The conduct must be extreme and outrageous;

(3) There must be a casual connection between the wrongful conduct and the emotional distress;

(4) The emotional distress must be severe.

The acts of defamation were either intentional or reckless; the acts were outrageous and likely considered extreme; there was a casual connection between the conduct and distress; the distress was severe.

The Breach of Confidentiality was an intentional act and reckless; it disregarded the high likelihood that appellant would overhear the conversation or be told of the conversation by the classmate; the acts were outrageous and likely considered extreme; there was a casual connection between the conduct and distress; the distress was severe.

In noting that the distress was severe, appellant did not need medical etc. attention. Medical effects are not necessary to it to be actionable however. It was severe enough to cause severe emotional distress to appellant and

appellant could not take the final exam as scheduled. Further there was a loss of friendship.

See *Amended Complaint* (Appendix D) ¶¶ 13-20, 22-26, 31-33; *Complaint* (Appendix B) ¶¶ 13-20, 22-26, 31-33 for the events leading to the emotional distress.

E. Civil Rights

1. Appellant does not give up his constitutional rights by attending appellee's school. The U.S. Supreme court has held:

> The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it.

Marsh v. Alabama , 326 U.S. 501, 506 (1946).

2. Unreasonable Seizure – 4th Amend. U.S. Constitution.

While a police officer does not violate the Fourth Amendment simply by approaching an individual in a public place and asking him questions, the individual "need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way." *Florida v. Royer*, 460 U.S. 491 (1983).

The U.S. Supreme court has also held:

> In contrast, a much different situation prevailed in *Brown* v. *Texas*, 443 U.S. 47 (1979), when two policemen physically detained the defendant to determine his identity, after the defendant refused the officers' request to identify himself. The Court held that absent some

> reasonable suspicion of misconduct, the detention of the defendant to determine his identity violated the defendant's Fourth Amendment right to be free from an unreasonable seizure. *Id.*, at 52.

Immigration & Naturalization Service v. Delgado, 466 U.S. 210

In each of the unreasonable seizure incidents, appellee was acting under color of state law. See *Amended Complaint* (Appendix D) ¶¶ 29 (b), (c) []; *Complaint* (Appendix D) ¶¶ 29 (b), (c).

In each incident appellant was detained against his wishes by the appellee police when no reasonable suspicion or basis for so doing existed. Further, appellant was singled out for the detainment, asking non-police BYU employees to report appellant on sight, this in spite of appellant being a student.

3. Denial of Equal Protection of Laws – 14th Amend. U.S. Constitution.

The U.S. Supreme court has held that a "class of one" is a recognizable class Denial of Equal Protection of Laws purposes. *Willowbrook v. Olech*, 528 U.S. 562 (2000).

Other students similarly situated are not singled out for false imprisonment, defamatory articles or have security approach their classmates and start a character assault on them.

Appellant has alleged (or can amend the pleadings) sufficiently to show that he has been singled out for treatment in the form of torts that others similarly situated do not suffer. Further the action are done under color of state law and appellee's employees acting in concert with the state actor police in bringing about torts and violation of civil rights.

F. FERPA

Appellant injury based on violation of 20 USCS § 1232g, the Family Education Right to Privacy Act **(FERPA)** exists. Where an institution of higher learning receives government assistance either direct or via students that receive government aid, that institution is required to abide by FERPA. This means confidential student information can not be given out without the student's permission. Student disciplinary information is held to be within the scope of FERPA. See *United States v Miami Univ.* 91 F Supp 2d 1132 (SD Ohio 2000). (Government was entitled to permanent injunction to prohibit universities' future violations of 20 USCS § 1232g, where government showed that universities had violated statute by releasing student disciplinary records containing personally identifiable information without prior consent of students or their parents, since this was only adequate remedy available and harm to third parties that could arise from injunction enforcing statute was slight.)

Appellant has alleged that private disciplinary information about appellant was given out to others (internet site article, fellow classmate) without his permission. See *Amended Complaint* ¶¶ 22-26, 31-33; See *Complaint* (Appendix B) ¶¶ 22-26, 31-33.

These acts are also of greater severity as far as injuring the appellant in light of the previous false arrest and sexual assault complaint, which was included in the complaint of the present matter to give greater perspective of why the preceding torts have caused great emotional and mental trauma to the appellant.

IV. Trial court missed the *Torts* issue completely

The trial court in its *Ruling* (Appendix C) p. 5 states: "Relief from the harassment of police officers was not a term of the parties' agreement." Also on p. 5: "In this matter, plaintiff alleges that defendant's failure to protect him from the harassment of various police officers has denied him the fruits of the parties' agreement". On p. 6 "The Court has already found that under the terms of the agreement, defendant had no obligation to protect plaintiff from the police officer's alleged harassment"). On p. 6 "Plaintiff, in his complaint, attempts to enlarge and expand the terms of the agreement to include protection from police harassment."

The trial court seemed to miss the point that the acts of the appellee were 1) torts and 2) various other torts were committed by non-police as tortfeasors, yet the trial court narrows its ruling to police "harassment".

As shown in part **III** above, the acts are torts (violation of the law) and not simply "harassment".

The same problem arose in the (second) *Ruling* (Appendix E) (denying reconsideration) p. 3: "Plaintiff suggested that this Court employ the covenant of good faith and fair dealing to imply a contractual obligation on the part of Brigham Young University to insure that BYU Police would not approach or apprehend plaintiff."

1. That is not what appellant asked the court to do.

2. There is a difference between "approaching or apprehending" appellant and false imprisoning him or violating the unreasonable seizure clause of the 4th amend. of the U.S. Constitution. Appellee's police have done much more than approach or apprehend him. Apprehend seems to denote that appellant has done something worthy of being arrested. In Appellant's complaint, nowhere are there any facts to imply or denote that appellant did anything worthy of being apprehended or false imprisoned.

Appellant has also shown defamation as a contributing factor to the

injury to his right to enjoy the contract. When a student's reputation is damaged in the eyes of fellow peers it harms the educational experience.

3. Further the complaint is not limited to police conduct. For example, the *Amended Complaint/Complaint* sets forth the facts necessary for causes of action of Defamation ¶¶ 13-20,22-26; Breach of Confidentiality ¶¶ 31-33; Family Education and Right to Privacy Act violations ¶¶ 22-26, 31-33 which are attributable to acts by non-police. See also *Complaint* (Appendix B) Defamation ¶¶ 13-20,22-26; Breach of Confidentiality ¶¶ 31-33; Family Education and Right to Privacy Act violations ¶¶ 22-26, 31-33. Reference to any of these acts are noticeably omitted from the Rulings.

Other students similarly situated are not singled out for false imprisonment, defamatory articles or have security approach their classmates and start a character assault on them.

Trail court appears to have read the complaint in a light very favorable to the appellee.

IV. Trial court missed the *Injure* element completely

St. Benedict's Dev. Co. has as an element for breach of Good Faith and Fair dealing either 1) an injury to, or 2) destroying of, a parties right to receive the benefits of the contract.

The original *Ruling* pp. 4-5 states: "Plaintiff did not allege that defendant has failed to fulfill its obligation under this agreement; plaintiff has been allowed to enroll in classes." Appellant did not allege a total breach (*destruction*) of the contract. Appellant did allege that he has been *injured* in the right to receive the fruit of the contract. Under *St. Benedict's Dev. Co.* either a *destruction* of the right or *injury* to the right is actionable. Appellant has alleged injury. The trail court completely omitted the *injury to the right to enjoy the contract* element of *St. Benedict's Dev. Co.*

V. Lack of Administrative Oversight/Deliberate indifference

The other compelling issue regarding the torts committed by the appellee is the fact that the administration is uninterested and unable to obviate the torts and their future commission. See *Amended Complaint* ¶¶ 36-37. See also *Complaint* (Appendix B) ¶ 36.

This should also support the theory of breach of good faith and fair dealing.

VI. The case is actionable on the Contract

A cause of action on the contract or in tort can arise for injury resulting out of contractual relations. See *Torts,* p. 399-400.

The facts of this case allow for a cause of action on the contract. This is especially true as appellant has shown a breach of good faith and fair dealing.

VII. Amendment of Complaint

Appellant maintains the original complaint sufficiently stated a cause of action on the contract. Appellant's complaint should be considered in a light most favorable to him and if reasonable inferences are drawn therefrom, the case should be allowed to proceed.

The amended complaint mainly uses slightly different wording to characterize the facts to emphasize the validity of the case such as that the acts of the appellee constituted torts. Two additional false imprisonment incidents are included - which could be excluded if necessary.

Amending of the complaint could be allowed if a cause of action on the contract has been shown.

Conclusion & Relief Sought

Appellant's right to the benefits of the contract has been injured. Appellant has been defamed by appellee on two occasions which damaged his reputation among the student body and faculty, caused emotional distress and injured and damaged the fruits of the contract and the enjoyment thereof.

Appellant has been singled of by appellee's police for false imprisonment on numerous occasions. This has injured the right to benefit from the contract as Appellant does not (and should not) want to suffer tort against him simply by being on campus.

Appellant has had violation of confidentiality committed by a security guard who works under the police approaching a classmate, former roommate and friend in a computer lab and beginning a character attack on appellant, highly disrupting appellant's ability to study and succeed in his schoolwork and destroying a friendship.

The administration of appellee is uninterested and unable to prevent these torts against appellant.

The criteria outlined in for breach of good faith and fair dealing in *St. Benedict's Dev. Co. v. St. Benedict's Hosp.* is satisfied.

The trial court ruling dismissing the case should be reversed.

Respectfully,

DATED 9 August, 2003.

Aaron Raiser

I certify that a true and correct copy of the document was mailed
11 August, 2003 to
9

General counsel (Brigham Young University)
A-357 ASB
Provo, 84602

Aaron Raiser

Appendix A. Original Contract

SETTLEMENT AGREEMENT AND RELEASE

Aaron Raiser has filed two lawsuits against Brigham Young University, #990400300 and #990400717 in the Fourth District Court in the State of Utah. Raiser and BYU have reached an agreement to settle these cases on the following terms and conditions:

1. Raiser and BYU will execute and file stipulations for dismissal of the lawsuits in the form set forth as Exhibit A to this Agreement.

2. BYU will permit Raiser to register to audit up to a total of ten courses offered by BYU in the Spring or Summer term of any year starting with 2000 and ending in 2009. BYU will waive all tuition costs, but Raiser will pay for books and supplies. If a course Raiser wishes to audit is filled prior to his registration, BYU shall have no obligation to increase enrollment to accommodate Raiser's desire to audit the class.

3. Raiser hereby releases BYU from all claims and causes of action of every kind whatsoever he has or may have against BYU, its employees, officers and trustees, including but not limited to the claims and causes of action embodied in the lawsuits described above. This Release includes all claims, known and unknown existing on the date of this agreement. BYU hereby releases Aaron Raiser from all claims and causes of action it has or may have against him. This Release includes all claims known and unknown on the date of this agreement.

4. This agreement is the sole agreement between the parties relating to claims against one another and all other agreements written and oral are void.

DATED this 28th day of July, 1999.

Aaron Raiser

BRIGHAM YOUNG UNIVERSITY

Alton Wade
Student Life Vice President

Appendix B. Original Complaint

cbyu4

Aaron Raiser, Pro Se
483 N. 7 Peaks Blvd apt 365
Provo, Utah 84606
aaron_raiser@yahoo.com
801.375.2074

In the Fourth District Court, State of Utah

Aaron Raiser Plaintiff v. Brigham Young University Defendant	Complaint Civil No. 0204 03144 Judge: 4

Plaintiff complains against defendant and for causes of action alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a resident of Utah County

2. Defendant is a corporation organized and existing pursuant to the laws of the State of Utah. At all times relevant hereto, was authorized to and was doing business in Utah County, Sate of Utah.

3. This Court has jurisdiction over this matter because the amount in controversy exceeds $8,000, exclusive of costs.

4. Venue is proper in this county pursuant to U.C.A. 78-13-4.

ALLEGATIONS RELEVENT TO ALL CLAIMS FOR RELEIF

5. On or about 26 July, 1999, Plaintiff and Brigham Young University reached an out-of-court settlement in cases 990400300 and 990400717 in this court. See Appendix B.

6. The basis for the complaints had been extreme misuse of police authority and power at BYU and abuse and harassment misusing that authority towards plaintiff.

Breach of Contract

7. Defendant has breached said contract for a lack of good faith in providing an atmoshpere free of abuse and civil rights violations where plaintiff can attend and concentrate on his studies and not be inflicted with emotional and mental stress and pain due to illegal activities of its employees towards plaintiff.

8. To understand the emotional and mental stress and pain plaintiff has suffered at the hands of the defendant the court needs to understand the difficulties plaintiff has had with defendant in the past.

The facts as alleged in the previous two lawsuits complaints were not trivial.

9. If defendant can not accept these as having merit, the facts alleged can be shown as being true at court as they relate to the purposes of the present complaint.

9. Plaintiff accepted the settlement agreement assuming that such conduct of the police against plaintiff would cease.

10. Plaintiff specifically spoke with Hal Visick, BYU general councel about said conduct and Hal Visick stated he spoke with the police about the matter and based on the conversation with BYU general counsel plaintiff felt that the abuse would stop. This was also conveyed to plaintiff by Alton Wade, vice president of student life.

11. It was somthing plaintiff did not feel necessary to get in writing concerning the termination of the abuse on the part of the police as it was somthing they should, by law, be doing anyway.

12. Plaintiff also spoke with the President Bateman and he also conveyed that the ciorcumstances regarding the previous lawsuits should be forgiven and forgotten and Plaintiff felt that this meant the police would also take a forgive and forget approach i.e. treat Plaintiff as any other person or alumnus.

13. However, on or about September of 1999, the police wrote an defamatory article, an article that was admittedly false, about plaintiff.

14. Said article appeared in the school's Daily Universe newspaper.

15. Said stated that the police had recieved a police call from a student at Wymount Terrace stating she saw a suspicious person at the Wymount chapel. While the police did not find plaintiff at the chapel they jumped to the conclusion it was him and wrote an article describing the car plaintiff drives; printed the exact stats off his drivers license and then proceeded to warn the reader to aviod this person.

16. Not everyone shares the opinion of the police regarding the plaintiff. For example (plaintiff would prefer not to mention it but it maybe helps to understand), after a fireside plaintiff went to speak with president Bateman and the first thing he said to plaintiff after he introduced himself was that Eugene Bramhall sure did have a high opinion of plaintiff. Eugene Bramhall used to be their general counsel.

17. Plaintiff explained the incident to school president, Merril Bateman, and he seemed to agree with plaintiff that the article was without basis and inappropriate.

19. While not mentioning plaintiff by name, police admitted they were reffering to plaintiff. Alton Wade, vice president of student life at the time made the police print a retraction of the article that appeared in the school paper on the last day of Winter semester 1999.

20. This article was defamatory as it was not true

and enough people would have associated plaintiff with the person in the article based on the description, including two former members of plaintiff's byu ward.

21. The incident was extremely traumatice and emotionally stressful.

22. Another defamatory incident occurred on or about September 2000.

23. The September 2000 incident occurred when the BYU police gave the Daily Universe false and misleading information about plaintiff which information got published on the school newspaper web site and came within 1 hr. of printed publication.

24. The main falsehood, and there were many, was that Plaintiff had been convicted of criminal tresspassing at BYU, said information obtained from the BYU police.

25. Plaintiff discovered the article prior to print publication and called Mr. Orme from the general counsel's office at home at 8 pm or so who had it stopped. Plaintiff also called Eugene Bramhall from general counsel's office and Nick Smith, a former Bishop, both having first hand information that the article was false and they also helped.

26. The incident was traumatic for the plaintiff he has attended BYU and felt derired for no genuine purpose

and the article was about three full internet pages and people from BYU working directly across from plaintiff at his place of employment as a software engineer brought the school newspaper to work.

27. Plaintiff attempted to take the forgive and forget approach to the defendant's conduct in (8) - (26).

28. Plaintiff returned to Brigham Young University spring of 2002.

29. Plaintiff was stopped or detained by BYU police on three occasions without cause.

(a) On or about May 19, 2002, Plaintiff was walking on campus at about 11:15 pm when he was stopped by a night security person who said: non students could be on campus as long as they were not inside the buildings, students could be in the buildings anytime. Plaintiff was outside at the time and secerity never bothered finding out if he was a student or not and called the police on him for simply walking on campus. Plaintiff was then detained by a BYU police officer.

(b) On or about May 26, 2002 Plaintiff was walking through the chemistry building. Said chemistry building was open and the hallway was legally accesible by all students.

Plaintiff was sighted by security and for merely walking through the building as a student immediately had the police called on him.

Plaintiff could here the person calling on the radio after passing Plaintiff that he spotted someone looking like Aaron Raiser and then followed Plaintiff continually calling police to update his position.

Plaintiff ran out of patience with him and asked him why he was being followed and then told him he was a student.

A police officer arrived and Plaintiff asked him why this had happened to him and the officer responded that security had been instructed to report Plaintiff on sight to the police.

This even though Plaintiff was a student doing nothing other than being on campus.

(c) Plaintiff was stopped on June 2, 2002 on the sidewalk of the chemistry building for as someone reported a person walking through the chemistry building. The chemistry building was open. This time however after being stopped the officer said that they had instructed personnel to question anyone not belonging in the area to the police and report them if they were not chemistry majors etc. Based on statements of the officer, BYU police had issued an advisory for chemistry building personnel to specifically report Plaintiff [or someone similar] to police.

Plaintiff asked police officer if he was being detained. Police Officer said no. Plaintiff asked if he could leave.

copy4
Police Officer said not until they had talked. After talking and allowing Plaintiff to go a second officer kept telling 3 or 4 times to Plaintiff that he was "stuck up". This was done in a taunting manner without basis.

30. Plaintiff gennerally felt singled out and put down by security and the police and did not and does not feel comfortable around them based on the numerous abusive experiences with them.

31. On or about 13 June, 2002, 9:15 pm plaintiff was in one of the downstairs TMCB computer labs working on homework when one of the security guard who previously had stopped and called the police on him without basis came in and began visiting with another student. Plaintiff left; security guard continued talking to the other student who happened to be a former roomate and reasonably close friend and began telling Plaintiff's friend about all the things the police dispatch had said about Plaintiff when he reported Plaintiff to police and Plaintiff could hear the conversation from outside the lab, former roomate gasping in repsonse; security guard having no basis for sharing this information with former roomate of Plaintiff and now former friend.

32. The damage did not stop there as this friend was in the same class as Plaintiff and the emotional damage

and discomfort between the two, and with the anger Plaintiff felt towards the security guard, was such that Plaintiff requested from the instructor taking the final exam for the class at 3:00 pm outside of class instead of in class at 5 pm to be able to concentrate on the exam.

33. Plaintiff was and is extremely shook up about the incident.

34. The forementioned incidents along with the items in appendix B, Plaintiff beleives there is extreme animosity on behalf of police department towards plaintiff.

35. This is not trivial animosity, it is somthing causing severe emotinal scarring to the Plaintiff which he can no longer withstand and plaintiff does not want to risk subjecting recieving again.

36. Plaintiff did issue a complaint to two the people over the police and has heard nothing back from them. Even if they did respond Plaintiff has received too many unfulfilled promises or expectations from previous administrators in the past and is no longer willing or able to continue on with the settlement agreement and release of appendix A.

37. Defendant has not excercised good faith and fair dealing in their part of the agreement.

38. The value of the agreement at today's date is according to BYU publication:

($214 / credit hour) x 40 credit hour = $8560;

Plaintiff, relying on, and anticipating taking said classes for career or personal enhancement, if taking said classes at another university would incur the cost.

39. Plaintiff incorporates the allegations contained in paragraphs 1 through 38 above as if set forth in full at this point.

FIRST CLAIM FOR RELEIF
(BREACH OF CONTRACT - GOOD FAITH AND FAIR DEALING)

40. Plaintiff and Defendant did enter into a settlement agreement and release on 28 July, 1999.

41. Plaintiff has fulfilled his part of said agreement.

42. Defendant has breached their covenant of good faith and fair dealing in fulfilling their part of said agreement.

43. Defendant has shown a willful failure to respond to plain, well-understood statuatory or contractual obligations. in creating or allowing to exist an atmosphere of abuse towards plaintiff; an atmosphere in which plaintiff can not study or function free of said abuse; causing a loss of the value of said contract to the plaintiff.

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44. Plaintiff incorporates the allegations contained in paragraphs 1 through 43 above as if set forth in full at this point.

SECOND CLAIM FOR RELEIF
(BREACH OF CONTRACT - MISREPRESENTATION)

45. Plaintiff had filed two complaints against defendant resulting from severe police abuse towards Plaintiff.

46. Plaintiff did enter into a settlement agreement and release on 28 July, 1999 with and Defendant contingent upon a commitment on the part of Defendant that said police abuse would cease.

47. Plaintiff specifically asked if said abuse prior to signing said settlement agreement and was told that it would by Defendant's general counsel, Hal Visick.

48. Plaintiff was further told or led to beleive by the school president and vice president of student life that both sides were to take a forgive and forget approach to the past incidents which also led plaintiff to beleive that the police abuse would cease.

49. Said police abuse has not ceased in violation of plain, well-understood statuatory or contractual obligations, creating an atmosphere of abuse towards plaintiff; an atmosphere in which plaintiff can not study or function free of said abuse; causing a loss of the

value of said contract to the plaintiff; and causing a loss of opportunity to litigate cases 990400300 and 990400717 and obtain damages therefrom.

50. Plaintiff incorporates the allegations contained in paragraphs 1 through 49 above as if set forth in full at this point.

THIRD CLAIM FOR RELEIF
(BREACH OF SETTLEMENT AGREEMENT)

51. Plaintiff and Defendant did enter into a settlement agreement and release on 28 July, 1999.

52. Plaintiff has fulfilled his part of said agreement and as a result did stipulate for dismissal (with prejudice) cases 990400300 and 990400717.

53. Defendant has breached their covenant of good faith and fair dealing in fulfilling their part of said agreement and as a result has BREACHED THE SETTLEMENT AGREEMENT. Defendant has shown a willful failure to respond to plain, well-understood statuatory or contractual obligations.

54. Said violation of plain, well-understood statuatory or contractual obligations has created an atmosphere of abuse towards plaintiff; an atmosphere in which plaintiff can not study or function free of said abuse; causing a loss of the value of said contract to the plaintiff; and causing a loss of opportunity to litigate cases 990400300 and 990400717 and

obtain damages therefrom.

55. Plaintiff incorporates the allegations contained in paragraphs 1 through 54 above as if set forth in full at this point.

ON PLAINTIFFS FIRST SECOND AND THIRD CLAIM FOR RELEIF

1. For Damages of $8560;

OR in the Alternative

For rescision of said contract AND by ORDER of THIS COURT to permitt the originally settled cases to go to trial;

2. For costs of suit;

3. For such further relief as the Court deems proper under the curcumstances.

DATED this 25th day of July, 2002.

Aaron Raiser, Provo, Utah

Appendix A

Aaron Raiser, Pro Se
504 N. 7 Peaks Blvd apt 105
Provo, Utah 84606

In the Fourth District Court, State of Utah

Aaron Raiser Plaintiff	}	Amended Complaint
v.	}	Civil No. 990400717
Brigham Young University Defendant	}	Judge: Harding Sr

Plaintiff complains against defendant and for causes of action alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a resident of Utah County

2. Defendant is a corporation organized and existing pursuant to the laws of the State of Utah. At all time relevant hereto, was authorized to and was doing business in Utah County, Sate of Utah.

3. This Court has jurisdiction over this matter because the amount in controversy exceeds $20,000, exclusive of costs.

4. Venue is proper in this county pursuant to U.C.A. 78-13-7.

ALLEGATIONS RELEVENT TO ALL CLAIMS FOR RELEIF

5. On the night of April 18, 1997, at approximatly

9:50 p.m., Plaintiff was transported to Utah County Jail under auspices of criminal tresspassing.

6. Prior to this, Plaintiff was detained by Brigham Young University police. Police informed Plaintiff that they received a call of someone standing outside the Joseph Smith building on campus.

7. Plaintiff had all items removed from his pockets by police. Upon finding Plaintiff's Driver's lisence officer, who was later identified as commanding officer, demanded that Plaintiff recite his Social Security number. When Plaintiff asked him to get it off driver's lisence, commanding officer became inflamed.
Plaintiff was also put in handcuff's. Officers (Four (4) of them were there) were extremely abusive and angry. Three of the four did use profane or swear language.

8. Plaintiff was asked what he was doing on campus. Plaintiff told police that it was Sunday and campus is for church on sunday and that his ward meets on campus for church.
He further explained that tithes of members are to support church facilities for members to attend church and to worship and that he felt he was using church facilities for such purposes.

(At this time plaintiff was off Brigham Young University property. Plaintiff had jogged across a busy street bordering campus and was unaware that police were coming to talk to him. Further all police had to do was to say they were there to talk with Plaintiff before Plaintiff crossed street.)

9. Police responded angrily that that wasn't a sufficient answer and another officer went around plaintiff and tightened handcuffs. Officers began yelling at plaintiff that they weren't playing games.

10. Plaintiff was told if he didn't tell them what he was doing on campus he would be taken to jail. He responded that he already told them. Officers then jerked him to police vehicle yelling at him they wern't playing games. Plaintiff responded: ok, ok, ok. And again made an attempt to explain what church and sunday are for explaining to them that he had full permission to be on campus for church and church related activities.

11. An example of church related activity could be verified by Eugene Bramhall of Brigham Young University General Counsel who was Plaintiff's Stake President (an ecclesiastical leader) who travelling to meeting early one sunday morning noticed Plaintiff standing by Marriott Center and stopped to talk. Plaintiff told him

that he was preparing for a talk he was to give later that day (i.e. no noisy roomates on campus).

12. Officers continued to jerk him once again to police vehicle angrily yelling they weren't playing games. Plaintiff responded: ok, ok, ok. And this time said he was going for a walk (which many people do there on sunday, and can it be understood that people can walk and consider church/spiritual things at same time).

13. Officers continued to jerk him once again to police vehicle angrily yelling they weren't playing games. Plaintiff responded: ok, ok, ok. And this time said he was hanging out (which
can it be understood that people can hang out
and consider church/spiritual things at same time).

14. Apparently that satifsied them and they gently walked plaintiff away from police vehicle.

15. Plaintiff further told police that he had permission to attend church on sunday and chuch related activities there.

16. Plaintiff heard radio dispatch person state that Plaintiff had permission to attend church
and chuch related activities there.

17. Plaintiff further told/asked police to call his

bishop, Nicholas Smith of Alpine Utah, to verify this. Plaintiff also told/asked police to call a reliable source at Brigham Young University, Eugene Bramhall, who is General Counsel to the School's President, that he had permission to attend church and church related activities on sunday and that his ward meets on campus.

18. Plaintiff further told police that Dave Thomas, (who working for Brigham Young University General Counsel and was serving in an official capacity for Brigham Young University) told Plaintiff that it was to be left to Plaintiff's "judgement" as to when he left on sunday.

19. According to Plaintiff's chruch's religious beleifs and doctrine, he was using church facilities appropriately.

Plaintiff, if he had been dissallowed to attend church on campus, should have been notified of any change in permission and been allowed to conform to such before being sent to jail.

20. At this point Plaintiff had already had "pat down" perfomed on him by police.

21. One officer said to Plaintiff: "How do we know you are not a pervert". Plaintiff was then sexually assaulted

by police officer of Brigham Young University:
Officer performed "second" pat down, this time breifly touching Plaintiff's upper right arm, upper left arm, then placed his right hand on Plaintiff's private parts, and with extreme force pushed on plaintiffs private parts, moved his hand slowly across plaintiffs private parts pushing with force. Plaintiff looked over at officer while his hand was on his private parts and officer had an expression on his face as if to be feeling for somthing.

The time officer had his hand directly on plaintiff's private parts was approximately 4 seconds.

22. Plaintiff previously has been inproperly detained in past at Brigham Young University by seargent Richard Decker who has had a long running dislike towards Plaintiff and has made his dislike present to others on Brigham Young University police.

23. Plaintiff was told he would be taken to his home by police, was put in police vehicle and was there by himself for approximately 5 minutes.- Police then consulted amongst selves and person/people at police station on campus then told him he was going to jail.

FIRST CLAIM FOR RELEIF

(WRONGFUL ARREST)

24. Plaintiff was arrested by Brigham Young University security and taken to jail for alleged Criminal Tresspassing.

25. Plaintiff had complete permission to be on campus Sundays for church and church related activities. Plainti maintains the church institution that sponsers Brigham Young University has his complete support that he was using church facilities which his tithe supports for appropriate church/religious activity.

Plaintiff was further told by Dave Thomas, who was speaking in a representative capacity of Brigham Young University and had complete autority from Brigham Young University to speak as such, that it was left to plaintiff's judgement as to when he left on sunday. Brigham Young University security had no legal basis for taking him to jail. The information that he had permission to be present on campus is in direct contradiction of the officer's surmise that he had no permission to be on campus.

26. Criminal Tresspassing charge was subsequently dismissed at request of Defendant.

27. Plaintiff incorporates the allegations contained in

paragraphs 1 through 26 above as if set forth in full at this point.

SECOND CLAIM FOR RELEIF
(FALSE IMPRISONMENT)

28. Plaintiff was arrested by Brigham Young University security and taken to jail for alleged Criminal Tresspassing.

The Defendant intentionally acted to confine Plaintiff; Defendant's actions resulted in the jailing of Plaintiff.

29. Plaintiff had complete permission to be on campus Sunday for church and church related activities. Plaintiff maintains the church institution that sponsers Brigham Young University has his complete support that he was using church facilities which his tithe supports for an appropriate church/religious activity.

Plaintiff was further told by Dave Thomas, who was speaking in a representative capacity of Brigham Young University and had complete autority from Brigham Young University to speak as such, that it was left to plaintiff's judgement as to when he left on sunday.

Thus, Brigham Young University acted having no reasonable grounds to take Plaintiff taken to jail. The information that he had permission to be present

on campus is in direct contradiction of the officer's surmise that he had no permission to be on campus.

30. Criminal Tresspassing charge was subsequently dismissed at request of Defendant, who acknowledged that they had acted, or may have acted inproperly.

31. Plaintiff incorporates the allegations contained in paragraphs 1 through 30 above as if set forth in full at this point.

THIRD CLAIM FOR RELEIF
(MALICIOUS PROCECUTION)

32. Brigham Young University security were aware they had no basis for his arrest. In arresting Plaintiff, Brigham Young University initiated a criminal proceeding against Plaintiff.

33. Plaintiff was taken to jail due to malice on behalf of police present and to directly or indirectlly appease/satisfy seargent Richard Decker who has had a long running dislike towards Plaintiff.

34. Criminal Tresspassing charge was subsequently dismissed at request of Defendant, who acknowledged that they had acted, or may have acted inproperly. Probable cause, based on information in posession

of Brigham Young University did not constitute probable cause for initiating criminal proceeding against him; said information contradicting the notion there was cause for initiating said criminal proceeding.

35. Plaintiff incorporates the allegations contained in paragraphs 1 through 34 above as if set forth in full at this point.

FOURTH CLAIM FOR RELEIF
(SEXUAL ASSAULT)

36. Plaintiff had "second" pat down done on him.

37. The manner in which officer touched Plaintiff's private parts, the pressure exerted, the length of time spent doing so and the fact that officer said "How do we know you are not a pervert" prior to his action; such action can in no way be construed as a pat down.

38. A Citizen has right not to have another person forcefully impose themselves on onother persons private parts.

39. Plaintiff incorporates the allegations contained in paragraphs 1 through 38 above as if set forth in full at this point.

FIFTH CLAIM FOR RELEIF
(UNREASONABLE SEARCH AND SEIZURE)

40. Plaintiff had "second" pat down done on him.

41. The manner in which officer touched Plaintiff's private parts, the pressure exerted, the length of time spent doing so and the fact that officer said "How do we know you are not a pervert" prior to his action; such action can in no way be construed as a pat down.

42. Constitution of United States of America protects against unreasonable search and seizure.

43. Plaintiff incorporates the allegations contained in paragraphs 1 through 42 above as if set forth in full at this point.

ON PLAINTIFFS FIRST AND SECOND CLAIM FOR RELEIF

1. For Damages of $100,000;
2. For costs of suit;
3. For such further relief as the Court deems proper under the curcumstances.

ON PLAINTIFFS THIRD CLAIM FOR RELEIF

1. For Damages of $25,000;
2. For costs of suit;
3. For such further relief as the Court deems proper under the curcumstances.

ON PLAINTIFFS FOUTH AND FIFTH CLAIM FOR RELEIF

1. For Damages of $1,500,000;

2. For costs of suit;

3. For such further relief as the Court deems proper under the curcumstances.

DATED this 4th day of March, 1999.

Aaron Raiser, Provo, Utah

Aaron Raiser, Pro Se
504 N. 7 Peaks Blvd apt 105
Provo, Utah 84606

In the Fourth District Court, State of Utah

Aaron Raiser Plaintiff v. Brigham Young University Defendant	Complaint Civil No. 990400300 Judge: Burningham

Plaintiff complains against defendant and for causes of action alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a resident of Utah County

2. Defendant is a corporation organized and existing pursuant to the laws of the State of Utah. At all times relevant hereto, was authorized to and was doing business in Utah County, Sate of Utah.

3. This Court has jurisdiction over this matter because the amount in controversy exceeds $20,000, exclusive of costs.

4. Venue is proper in this county pursuant to U.C.A. 78-13-7.

ALLEGATIONS RELEVENT TO ALL CLAIMS FOR RELEIF

5. In or about the month of June, 1997, Brigham Young University engaged in slanderous conduct against Aaron Raiser of Provo, Utah; Brigham Young University and it's designated agent(s) having been informed by Mr. Raiser that the statements they were making were false.

6. The statements in question were made to Chris Mathews of Alpine, Utah, by Mark Gotberg, who was

employeed by Brigham Young University and was acting for and in behalf of Brigham Young University.

7. The defamatatory statements are based upon a falsified police report by the Brigham Young University police wherein the report accuses Mr. Raiser of tresspassing on Brigham Young University property. While such a falsified report normally would be confidential, a designated representative of Brigham Young University namely Mark Gotberg, disseminated that falsified report to Mr. Mathews for the purpose of casting Mr. Raiser as one of questionable character.

8. The tresspassing claim is from a June 1996 incident at the Brigham Young University. Job listing are posted at the Abraham Smoot building. Alumni are offered an (written) invitation to use those listings in their persuit of employement. A snack room is located next to a wall with job postings. A few minutes after entering the Abraham Smoot building a police officer entered, and at two times during a supposedly non-police visit, Mr. Raiser was told that he could remain in snack room. The officer then went to the police room and wrote Mr. Raiser up for tresspassing.

The officer in question on a previous occasion had falsly accused Mr. Raiser of breaking into Mr. Raiser's car, was undercover, did not identify himself or purpose when attempting to question Mr. Raiser and then could not find his I.D. (at the time) after he did finnally identify himself. He then detained Mr. Raiser for about 30 minutes with no legal basis.

9. Mr. Mathews is a close friend of Mr. Raiser. He has and continues to associate with Mr. Mathews on a church basis and has dealt with Mr. Mathews on a business

basis. Such false statements have put considerable strain on the above mentioned relationship and has cost Mr. Raiser in mental and emotional grief and could impact any future business dealings he has with Chris Mathews.

10. Mr. Raiser has offered witnesses to corraborate the fact that he was not tresspassing, including a member of Brigham Young University police. Such opportunity was rejected.

11. The school president, Merril Bateman, vice president Alton Wade, and Dave Thomas from the school's legal counsel were aware what Mr. Raiser had refuted the tresspassing claim.

FIRST CLAIM FOR RELEIF

(DEFAMATION -- Against Defendant)

12. Plaingiff incorporates the allegations contained in paragraphs 1 through 11 above as if set forth in full at this point.

ON PLAINTIFFS FIRST CLAIM FOR RELEIF

1. For Damages of $125,000;
2. For costs of suit;
3. For such further relief as the Court deems proper under the curcumstances.

DATED this 1st day of February, 1999.

Aaron Raiser, Provo, Utah

APPENDIX B

SETTLEMENT AGREEMENT AND RELEASE

Aaron Raiser has filed two lawsuits against Brigham Young University, #990400300 and #990400717 in the Fourth District Court in the State of Utah. Raiser and BYU have reached an agreement to settle these cases on the following terms and conditions:

1. Raiser and BYU will execute and file stipulations for dismissal of the lawsuits in the form set forth as Exhibit A to this Agreement.

2. BYU will permit Raiser to register to audit up to a total of ten courses offered by BYU in the Spring or Summer term of any year starting with 2000 and ending in 2009. BYU will waive all tuition costs, but Raiser will pay for books and supplies. If a course Raiser wishes to audit is filled prior to his registration, BYU shall have no obligation to increase enrollment to accommodate Raiser's desire to audit the class.

3. Raiser hereby releases BYU from all claims and causes of action of every kind whatsoever he has or may have against BYU, its employees, officers and trustees, including but not limited to the claims and causes of action embodied in the lawsuits described above. This Release includes all claims, known and unknown existing on the date of this agreement. BYU hereby releases Aaron Raiser from all claims and causes of action it has or may have against him. This Release includes all claims known and unknown on the date of this agreement.

4. This agreement is the sole agreement between the parties relating to claims against one another and all other agreements written and oral are void.

DATED this 28th day of July, 1999.

Aaron Raiser

BRIGHAM YOUNG UNIVERSITY

Alton Wade
Student Life Vice President

Appendix C. Original Ruling Dismissing Case

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

AARON RAISER, Plaintiff, **vs.** BRIGHAM YOUNG UNIVERSITY, Defendant.	**Ruling** CASE NO. 020403144 DATE: February 27, 2003 Judge Guy R. Burningham

This matter is before the Court on defendant's *Motion to Dismiss*, and plaintiff's *Motion for Enlargement of Time*. Neither party has requested oral arguments on the motions. After reviewing the file, memoranda, and arguments of the parties, the Court enters the following ruling.

PROCEDURAL FACTS

1. On July 25, 2002, plaintiff, Aaron Raiser ("plaintiff"), filed his complaint alleging the following causes of action:

   a. Breach of the covenant of good faith and fair dealing
   b. Breach of contract – misrepresentation
   c. Breach of settlement agreement

2. On September 26, 2002, defendant Brigham Young University ("defendant") filed a *Motion for Stay Pending Removal*.

3. On October 28, 2002, the Utah Federal District Court entered an *Order of Remand*, remanding the case back to this Court.

4. On December 4, 2002, defendant filed a *Motion to Consolidate Actions* asking the Court to consolidate case no. 020403144 and case no. 020403619. Plaintiff responded to this motion on December 23, 2002; however, neither party has noticed this motion for decision.

5. The parties presented various discovery issues to the Court which were resolved at a hearing held on December 13, 2002.

6. On December 23, 2002, defendant filed a *Motion to Dismiss* the case pursuant to Utah R.Civ.P. 12(b)(6) – failure to state a claim upon which relief can be granted.

7. On January 7, 2002, plaintiff filed a notice of change of address with the Court stating that his new address is P.O. Box 4870 Ontario, CA 91761.

8. On January 24, 2003, plaintiff filed a *Motion for Enlargement of Time* to answer any pending motions of the defendant.

9. On February 3, 2003, plaintiff filed his response to defendant's *Motion to Dismiss*.

10. On February 11, 2003, defendants filed their reply memorandum.

11. Notice to submit defendant's *Motion to Dismiss* was filed February 15, 2002.

RELEVANT FACTS

On April 28, 1999, the parties in this case executed a Settlement Agreement ("agreement") in which plaintiff agreed to have two cases[1], which were pending against defendant in the Fourth District Court, dismissed with prejudice. In exchange for dismissing the cases,

[1] Case numbers 990400300 and 990400717.

defendant allowed plaintiff to register and enroll in ten courses offered by Brigham Young University at no expense to the plaintiff. After executing the agreement, both of the cases were dismissed.

DISCUSSION

PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME

As a preliminary matter, the Court notes that defendant did not file an objection to plaintiff's *Motion for Enlargement of Time*. Therefore, the Court GRANTS plaintiff's motion.

DEFENDANT'S MOTION TO DISMISS

Legal Standard

Defendant has asked this Court to dismiss plaintiff's complaint pursuant to Utah R.Civ.P. 12(b)(6) – failure to state a claim upon which relief can be granted. In deciding whether to dismiss a complaint, this Court must "construe the complaint in [a] light most favorable to the plaintiff and indulge all reasonable inferences in his favor." *Mounteer v. Utah Power & Light, Co.*, 823 P.2d 1055, 1058 (Utah 1991). Additionally, a motion to dismiss may only be granted when "there is no set of facts under which the [plaintiff] might succeed." *Olson v. Park-Craig-Olson, Inc.*, 815 P.2d 1356, 1360 (Utah Ct. App. 1991).

Plaintiff's First Claim for Relief -- Breach of the Settlement Agreement

In order to sufficiently plead a claim for breach of contract, plaintiff must state the following: (1) that a contract existed; (2) that the party seeking recovery performed under the

contract; (3) that the other party breached the contract; and (4) that the non-breaching party suffered damages. *Bair v. Axiom Design*, 2001 UT 20 ¶ 14, 20 P.3d 388, 392 (Utah 2001).

In this matter, plaintiff claims that various Brigham Young University employees made oral representations promising plaintiff relief from police harassment. Plaintiff asserts that these promises were an integral part of the agreement, and that defendant has breached the agreement by its failure to protect him from police officers' alleged physical, emotional, and sexual harassment.

When interpreting the terms of an contract, a court must first look within the four corners of the document to determine its meaning and the intent of the parties. *Central Florida Investment, Inc. v Parkwest Assoc.*, 2002 UT 3, ¶ 12, 40 P.3d 599, 605 (Utah 2002). Further, "if the language within the four corners of the contract is unambiguous, the parties intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law," and no extrinsic evidence may be introduced to modify the meaning of the contract. *Id.*(internal citations omitted).

The Court has reviewed the parties' agreement and finds that it is clear and unambiguous. Under the terms of the agreement, plaintiff agreed to have two pending suits against defendant dismissed. In exchange, defendant allowed plaintiff to enroll and audit up to ten courses at the university Plaintiff did not allege that defendant has failed to fulfill its obligation under this

agreement; plaintiff has been allowed to enroll in classes. Relief from the harassment of police officers was not a term of the parties' agreement.

Additionally, the agreement contains an integration clause which states, "This agreement is the sole agreement between the parties relating to claims against one another and all other agreements written and oral are void." This provision establishes that the agreement was fully integrated, and under the parol evidence rule this Court may not consider the alleged statements of the Brigham Young University employees to modify the terms of the agreement – to do so would be a violation of clear contract interpretation rules. *Central Florida* 40 P.3d at 605. Therefore, this Court finds that plaintiff has failed to sufficiently plead a cause of action for breach of contract, and the Court dismisses plaintiff's third claim for relief

Breach of the Covenant of Good Faith and Fair Dealing

It is well settled in Utah law that there is a covenant of good faith and fair dealing implied in every contract. *See St. Benedict's Dev. Co. v. St. Benedict's Hospital*, 811 P.2d 194 (Utah 1991). Under the implied covenant of good faith and fair dealing "each party impliedly promises that he will not intentionally or purposely do anything which will destroy or injure the other party's right to receive the fruits of the contract." *Id.* at 199. In this matter, plaintiff alleges that defendant's failure to protect him from the harassment of various police officers has denied him the fruits of the parties' agreement.

The Court has already found that under the terms of the agreement, defendant had no obligation to protect plaintiff from the police officer's alleged harassment. The Utah Supreme Court has stated that a party's obligations under a contract "cannot be enlarged and expanded by means of the implied covenant of good faith and fair dealing to include other promises not fairly included in the promise actually made." *Jensen v. Redevelopment Agency of Sandy City*, 951 P.2d 735 (Utah 1997). Plaintiff, in his complaint, attempts to enlarge and expand the terms of the agreement to include protection from police harassment. As stated above, a party is precluded from using the implied covenant of good faith and fair dealing to expand his or her rights under a contract. This is precisely what plaintiff is attempting to do in his first claim for relief. Because plaintiff has failed to articulate a valid "fruit of the contract" that defendant has denied him under the agreement, the Court finds that plaintiff has failed to plead a cause of action for breach of the implied covenant of good faith and fair dealing. Therefore, the Court dismisses plaintiff's first claim for relief.

Breach of Contract - Misrepresentation

Plaintiff asserts that he entered into the agreement "contingent upon a commitment on the part of Defendant that said police abuse would cease." (Plaint's Comp. at 11). Plaintiff alleges that the police have continued to harass him in contravention of the agreement.

After carefully reviewing the terms of the agreement, the Court finds that no assurances, promises, or obligations were made by either of the contracting parties which would have

precluded any police officer from questioning, detaining, or arresting plaintiff. As stated earlier in this ruling, the oral promises or representations made by any Brigham Young University employees are not part of the parties' agreement and may not form the bases of a claim for breach of contract. Plaintiff cannot rely on the oral statements of Brigham Young University employees as a bases for his claim for relief. Therefore, the Court finds that plaintiff has failed to state a cause of action for breach of contract based on misrepresentation. Accordingly, the Court dismisses plaintiff's second claim for relief.

In conclusion, the Court finds that there is no set of facts alleged in plaintiff's complaint under which he could succeed. Plaintiff's complaint fails to state a cause of action upon which relief can be granted. Therefore, pursuant to Utah R.Civ.P. 12(b)(6), this Court DISMISSES plaintiff's complaint in its entirety. As a result of this ruling, defendant's *Motion to Consolidate* is now moot. The Court orders defendant to prepare an order consistent with this ruling.

Dated at Provo, Utah this 6 day of ~~February~~ March 2003.

GUY R. BURNINGHAM
Fourth District Court Judge

Case No. 020403144

Appendix D. Proposed Amended Complaint

Aaron Raiser, Pro Se
P.O. Box 4870
Ontario, Ca 91761
aaron_raiser@yahoo.com

In the Fourth District Court, State of Utah

Aaron Raiser, Plaintiff,	}	Amended Complaint
v.	}	
Brigham Young University, Defendant.	}	Civil No. 020403144 Judge: Burningham

Plaintiff complains against defendant and for causes of action alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a resident of Utah County

2. Defendant is a corporation organized and existing pursuant to the laws of the State of Utah. At all times relevant hereto, was authorized to and was doing business in Utah County, Sate of Utah.

3. This Court has jurisdiction over this matter because the amount in controversy exceeds $8,000, exclusive of costs.

4. Venue is proper in this county pursuant to U.C.A. 78-13-4.

ALLEGATIONS RELEVENT TO ALL CLAIMS FOR RELEIF

5. On or about 28 July, 1999, Plaintiff and Brigham Young University reached an out-of-court settlement in cases 990400300 and 990400717 in this court. See Appendix

B.

6. The basis for those complaints had been extreme misuse of police authority and power at BYU and abuse and harassment misusing that authority towards plaintiff. They complaints covered civil rights violations, false imprisonment, false arrest and sexual assault. The entire BYU administration was aware of the nature of these complaints and plaintiff had written both president Bateman and V.P. Wade stating the nature of the complaints.

Breach of Contract

7. Defendant has breached said contract for a lack of good faith in providing an atmoshpere free of abuse and civil rights violations where plaintiff can attend and concentrate on his studies and not be inflicted with emotional and mental stress and pain due to illegal activities of its employees towards plaintiff.

8. To understand the emotional and mental stress and pain plaintiff has suffered at the hands of the defendant the court needs to understand the difficulties plaintiff has had with defendant in the past. The facts as alleged in the previous two lawsuits complaints were not trivial. See appendix B. These are included as if set forth in full herein.

9. If defendant can not accept these as having merit, the facts alleged can be shown as being true at court as they relate to the purposes of the present complaint.

Plaintiff accepted the settlement agreement assuming that such conduct of the police against plaintiff would cease.

10. Plaintiff did not feel it necessary to get in writing concerning the termination of the abuse on the part of the police as it was something they should, by law, be doing

anyway.

11. Plaintiff specifically spoke with Hal Visick, BYU general counsel about said conduct and Hal Visick stated he spoke with the police about the matter and based on the conversation with BYU general counsel plaintiff felt that the abuse would stop. This was also conveyed to plaintiff after the contract was signed by Alton Wade, vice president of student life.

12. Plaintiff also spoke with the President Bateman after the contract became executed and he also conveyed that the circumstances regarding the previous lawsuits should be forgiven and forgotten and Plaintiff felt that this meant the police would also take a forgive and forget approach i.e. treat Plaintiff as any other person or alumnus.

13. However, on or about September of 1999, the police wrote a defamatory article, an article that was admittedly false, about plaintiff.

14. Said article appeared in the school's Daily Universe newspaper.

15. Said stated that the police had received a police call from a student at Wyoming Terrace stating she saw a suspicious person at the Wyoming chapel. While the police did not find plaintiff at the chapel they jumped to the conclusion it was him and wrote an article describing the car plaintiff drives; printed the exact stats off his drivers license and then proceeded to warn the reader to "use caution around this person". Enough people could associate plaintiff with the person described in the article, including two former members of plaintiff's student ward (buy 36th).

16. Plaintiff explained the incident to school president, Merrill Bateman, and he seemed to agree with plaintiff that the article was without basis and inappropriate.

17. While not mentioning plaintiff by name, police admitted they were referring to plaintiff.

18. Alton Wade, vice president of student life at the time made the police print a retraction of the article that appeared in the school paper on the last day of Winter semester 1999.

19. This did not cure the original damage as its print date after 3 1/2 months rendered it meaningless along with it being printed during finals.

20. This article was defamatory as it was not true and enough people would have associated plaintiff with the person in the article based on the description, including two former members of plaintiff's byu ward.

21. The incident was extremely traumatic and emotionally stressful. It showed that the police were definitively out to get and demean plaintiff in the eyes of those that would read the article. Said police have never resorted to guessing at suspects when printing their articles. Such conduct is also a denial of equal protection of law as the police, acting under color of state law, do not do such things to others similarly situated.

22. Another defamatory article was published about plaintiff by the school's newspaper staff on their internet cite and was to be printed in the Daily Universe occurred on or about September 2000.

23. The September 2000 incident occurred when the BYU police gave the Daily Universe false and misleading information about plaintiff which information got published on the school newspaper web site and came within 1 hr. of printed publication.

24. The main falsehood, and there were many, was that Plaintiff had been convicted of criminal trespassing at BYU, said information obtained from the BYU police. This was defamatory by law.

25. Plaintiff discovered the article prior to print publication and called Mr. Orme from the general counsel's office at home at 8 pm or so who had it stopped. Plaintiff also called Eugene Bramhall from general counsel's office and Nick Smith, a former Bishop, both having first hand information that the article was false and they also helped. The article was also a sign that the defendant and their police single plaintiff out for such treatment as others similarly situated are not treated that way. Such conduct is also a denial of equal protection of law as the police, acting under color of state law, do not do such things to others similarly situated.

26. The incident was traumatic for the plaintiff he has attended BYU and felt derided for no genuine purpose and the article was about three full internet pages and people from BYU working directly across from plaintiff at his place of employment as a software engineer brought the school newspaper to work. The incident was also a violation of the Federal Family and Educational Right to Privacy Act.

27. Plaintiff attempted to take the forgive and forget approach to the incidents in (8) - (26).

28. Plaintiff was also false imprisoned by the defendant on other occasions off campus.

(a) On or about October, 2000, plaintiff was sitting in his car north of the horticulture science experimental lot (near 800 N. & 630 E.) and was ordered to give his

driver's license or face arrest. Plaintiff was told the BYU police can patrol the borders of their property. Officer could cite no laws being broken.

(b) On or about February, 1998, plaintiff was walking home from work at 1500 W. 800 N. Provo, when a BYU police officer Packer stopped him for the sole purpose of finding out who he was, citing no laws broken, demanding his name and date of birth or face having the Provo police called. This was far from BYU property. Officer actions were done under color of state law. Plaintiff related the incident to then general counsel Eugene Bramhall who had no idea why the officer had been there.

(c) On or about April, 2002, plaintiff was sitting in his car at the Provo city park river trail entrance south of the LDS motion picture studio. It was about 11:30 pm and a BYU officer parked his car directly in back of plaintiff's so he could not go anywhere and plaintiff asked if he was being detained and officer stated that plaintiff wasn't going anywhere, til he identified himself. The area where plaintiff was at was marked as city property and no curfew etc. existed denying the right to be there at that hour. Officer could cite no laws being broken. Officer actions were done under color of state law.

Plaintiff filed a complaint with the BYU police on that.

This conduct is not proper by Brown v. Texas 443 U.S. 47 (1979) (requiring police to have an articulated suspicion of a specific crime being committed prior to requiring a person to give their identification).

29. Plaintiff returned to Brigham Young University spring of 2002 as a student. Plaintiff was stopped or detained by BYU police on three occasions without cause.

(a) On or about May 19, 2002, Plaintiff was walking on campus at about 11:15 pm when he was stopped by a night security person who said: non students could be on

campus as long as they were not inside the buildings, students could be in the buildings anytime. Plaintiff was outside at the time and security never bothered finding out if he was a student or not and called the police on him for simply walking on campus. Plaintiff was then detained by a BYU police officer.

(b) On or about May 26, 2002 Plaintiff was walking through the chemistry building. Said chemistry building was open and the hallway was legally accessible by all students.

Plaintiff was sighted by security and for merely walking through the building as a student immediately had the police called on him.

Plaintiff could hear the person calling on the radio after passing Plaintiff that he spotted someone looking like Aaron Raiser and then followed Plaintiff continually calling police to update his position.

Plaintiff ran out of patience with him and asked him why he was being followed and then told him he was a student.

A police officer arrived and Plaintiff was then detained, asked him why this had happened to him and the officer responded that security had been instructed to report Plaintiff on sight to the police.

This even though Plaintiff was a student doing nothing other than being on campus.

(c) Plaintiff was stopped on June 2, 2002 on the sidewalk of the chemistry building for as someone reported a person walking through the chemistry building. The chemistry building was open. This time however after being stopped the officer said that they had instructed personnel to question anyone not belonging in the area to the police

and report them if they were not chemistry majors etc. Based on statements of the officer, BYU police had issued an advisory for chemistry building personnel to specifically report Plaintiff [or someone similar] to police.

Plaintiff asked police officer if he was being detained. Police Officer said no. Plaintiff asked if he could leave. Police Officer said not until they had talked. After talking and allowing Plaintiff to go a second officer kept telling 3 or 4 times to Plaintiff that he was "stuck up". This was done in a taunting manner without basis.

30. Plaintiff generally felt singled out and put down by security and the police and did not and does not feel comfortable around them based on the numerous abusive experiences with them. Such incidents amount no false imprisonment and are an unreasonable seizure. Such detainment also violates the Marsh v. Alabama 326 U.S. 506 holding:

> "Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

Defendant does open up their property to the public for its benefit for school, church and related activities.

31. On or about 13 June, 2002, 9:15 pm plaintiff was in one of the downstairs TMCB computer labs working on homework when one of the security guard who previously had stopped and called the police on him without basis came in and began visiting with another student. Plaintiff left; security guard continued talking to the other student who happened to be a former roomate and reasonably close friend and began telling Plaintiff's friend about all the things the police dispatch had said about

Plaintiff when he reported Plaintiff to police and Plaintiff could hear the conversation from outside the lab, former roomate gasping in response; security guard having no basis for sharing this information with former roomate of Plaintiff and now former friend. Security guard related to his former roomate that plaintiff had been arrested for lewdness involving a child and that plaintiff had been banned from campus among other things. There is extreme stigma in hearing someone arrested for something they did not do

and can otherwise prove, which is the case here. Further the incident amounted to defamation, putting plaintiff in false light. Plaintiff complained to the V.P. over police and no action was taken concerning the incident. The incident was also a violation of the Federal Family and Educational Right to Privacy Act.

32. The damage did not stop there as this friend was in the same class as Plaintiff and the emotional damage and discomfort between the two, and the anger Plaintiff felt towards the security guard, was such that Plaintiff requested from the instructor taking the final exam for the class at 3:00 pm outside of class instead of in class at 5 pm to be able to concentrate on the exam.

33. Plaintiff was and is extremely shook up about the incident.

34. The aforementioned incidents along with the items in appendix B, Plaintiff believes there is extreme animosity on behalf of police department towards plaintiff.

35. This is not trivial animosity, it is something causing severe emotional scarring to the Plaintiff which he can no longer withstand and plaintiff does not want to risk subjecting receiving again. Plaintiff can not study in an atmosphere where the police

and other employees walk around destroying plaintiff's friendships for no reason; in an atmosphere where plaintiff is defamed by newspaper articles so other students can hate plaintiff; where plaintiff is false imprisoned by the police for no legitimate basis at all; where police incite other students to call the police on him for no reason other than being on campus as a student breaking no laws.

36. Plaintiff did issue a complaint to two the people over the police and has heard nothing back from them. Even if they did respond Plaintiff has received too many unfulfilled promises or expectations from previous administrators in the past and is no longer willing or able to continue on with the settlement agreement and release of appendix A.

37. Defendant has not exercised good faith and fair dealing in their part of the agreement. Said conduct has constituted legal torts committed by defendant as plaintiff has attempted to enjoy the fruit of the contract. Plaintiff has been injured in his right to enjoy the fruit of the contract. Plaintiff's right to enjoy the fruit of the contract has been injured as plaintiff has been injured. The value and worth of the contract is nothing as plaintiff has to suffer purposeful torts committed against him when he goes to enjoy the fruits of the contract and the administration does not act to correct the violations of law.

38. The value of the agreement at today's date is according to BYU publication:

($214 / credit hour) x 40 credit hour = $8560;

Plaintiff, relying on, and anticipating taking said classes for career or personal enhancement, if taking said classes at another university would incur the cost.

39. Plaintiff incorporates the allegations contained in paragraphs 1 through 38 above as if set forth in full at this point.

FIRST CLAIM FOR RELEIF
(BREACH OF CONTRACT - GOOD FAITH AND FAIR DEALING)

40. Plaintiff and Defendant did enter into a settlement agreement and release on 28 July, 1999.

41. Plaintiff has fulfilled his part of said agreement.

42. Defendant has breached their covenant of good faith and fair dealing in fulfilling their part of said agreement.

43. Defendant has shown a willful failure to respond to plain, well-understood statutory and contractual obligations, in creating or allowing to exist an atmosphere of abuse towards plaintiff; an atmosphere in which plaintiff can not study or function free of said abuse; causing a loss of the value of said contract to the plaintiff by committing torts such as defamation, false imprisonment, putting plaintiff in false light and injuring his right to freely enjoy the rights of the contract.

44. Plaintiff incorporates the allegations contained in paragraphs 1 through 43 above as if set forth in full at this point.

SECOND CLAIM FOR RELEIF
(BREACH OF SETTLEMENT AGREEMENT)

45. Plaintiff and Defendant did enter into a settlement agreement and release on 28 July, 1999.

46. Plaintiff has fulfilled his part of said agreement and as a result did stipulate for dismissal (with prejudice) cases 990400300 and 990400717.

47. Defendant has breached their covenant of good faith and fair dealing in fulfilling their part of said

agreement and as a result has BREACHED THE SETTLEMENT AGREEMENT. Defendant has shown a willful failure to respond to plain, well-understood statutory or contractual obligations; causing a loss of the value of said contract to the plaintiff by committing torts such as defamation, false imprisonment, putting plaintiff in false light and injuring his right to freely enjoy the rights of the contract.

Said violation of plain, well-understood statutory or contractual obligations has created an atmosphere of abuse towards plaintiff; an atmosphere in which plaintiff can not study or function free of said abuse; causing a loss of the value of said contract to the plaintiff; and causing a loss of opportunity to litigate cases 990400300 and 990400717 and obtain damages therefrom.

48. Plaintiff incorporates the allegations contained in paragraphs 1 through 47 above as if set forth in full at this point.

ON PLAINTIFFS FIRST AND SECOND CLAIM FOR RELEIF

1. For Damages of $8560;

   OR in the Alternative

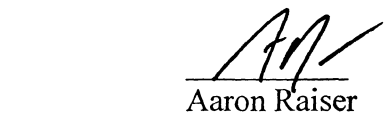
   For rescission of said contract AND by ORDER of THIS COURT to permit the originally settled cases to go to trial;

2. For costs of suit;

3. For such further relief as the Court deems proper under

the circumstances.

DATED this 18th day of March, 2003.



Aaron Raiser

Appendix A

SETTLEMENT AGREEMENT AND RELEASE

Aaron Raiser has filed two lawsuits against Brigham Young University, #990400300 and #990400717 in the Fourth District Court in the State of Utah. Raiser and BYU have reached an agreement to settle these cases on the following terms and conditions:

1. Raiser and BYU will execute and file stipulations for dismissal of the lawsuits in the form set forth as Exhibit A to this Agreement.

2. BYU will permit Raiser to register to audit up to a total of ten courses offered by BYU in the Spring or Summer term of any year starting with 2000 and ending in 2009. BYU will waive all tuition costs, but Raiser will pay for books and supplies. If a course Raiser wishes to audit is filled prior to his registration, BYU shall have no obligation to increase enrollment to accommodate Raiser's desire to audit the class.

3. Raiser hereby releases BYU from all claims and causes of action of every kind whatsoever he has or may have against BYU, its employees, officers and trustees, including but not limited to the claims and causes of action embodied in the lawsuits described above. This Release includes all claims, known and unknown existing on the date of this agreement. BYU hereby releases Aaron Raiser from all claims and causes of action it has or may have against him. This Release includes all claims known and unknown on the date of this agreement.

4. This agreement is the sole agreement between the parties relating to claims against one another and all other agreements written and oral are void.

DATED this 28th day of July, 1999.

Aaron Raiser

BRIGHAM YOUNG UNIVERSITY

Alton Wade
Student Life Vice President

Appendix B

See appendix B of original complaint

Appendix E. Second Ruling Dismissing Case

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

AARON RAISER,	**Ruling**
Plaintiff,	CASE NO. 020403144
vs.	DATE: May 22, 2003
BRIGHAM YOUNG UNIVERSITY,	Judge Burningham
Defendants.	

The matter is before the Court on plaintiff's *Motion to Reconsider* and Plaintiff's *Motion to Amend Complaint*. The Court having reviewed the file, memoranda and being duly informed therefrom, enters the following ruling.

Procedural History

1. On March 17, 2003, plaintiff Aaron Raiser ("plaintiff") filed a *Motion to Amend Complaint*.

2. On March 17, 2003, plaintiff filed a *Motion to Reconsider*.

3. On March 21, 2003, plaintiff filed a second *Motion to Amend Complaint*.

4. On March 31, 2003, plaintiff filed an *Amended Motion to Amend Complaint*.[1]

5. On March 31, 2003, defendant, Brigham Young University, filed its *Memorandum in*

[1] Plaintiff filed three motions to amend. In the interest of efficiency, all three motions to amend will be dealt with as one motion.

Opposition to Plaintiff's Motion to Reconsider.

6. On April 1, 2003, defendant filed a *Memorandum in Opposition to Motions to Amend Complaint.*[2]

7. On April 17, 2003, plaintiff filed an *Objection to Order as Drafted.*[3]

8. On April 17, 2003, plaintiff filed a *Response Memorandum to Plaintiff's Motion to Reconsider.*

9. On April 28, 2003, defendant filed a *Reply to Plaintiff's Objection to Proposed Order.*

10. On May 9, 2003, plaintiff filed a *Response to Defendant's Reply Regarding the Proposed Order.*

11. Notice to submit plaintiff's *Motion to Reconsider* and plaintiff's *Motion to Amend Complaint* was filed on April 28, 2003.

Discussion

Motion to Amend Complaint

Plaintiff's original complaint was dismissed by this Court for failure to state a claim upon which relief can be granted. Utah R.Civ.P. 12(b)(6). A trial court may deny a motion to amend a pleading when (1) it is filed after extensive delay, (2) it is filed without adequate justification,

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[2] Brigham Young University addressed plaintiff's various motions to amend in one combined memorandum.

[3] Plaintiff's *Objection to Order as Drafted* will be considered as part of the *Motion to Reconsider* section of this ruling.

and (3) after some of the issues have been resolved. *Prince v. Bear River Mutual Ins. Co.*, 56 P.3d 524 (Utah 2002).

First, the proposed *Amended Complaint* does not cure the deficiencies of the original complaint, nor does it raise new issues which were unknown to plaintiff at the time he filed his original complaint. Assuming the new issues raised by plaintiff in his proposed *Amended Complaint* were unknown to plaintiff at the time, they would not change the outcome of this case. The new factual allegations were simply additional episodes of "police harassment" completely consistent with the factual allegations stated in the original complaint. Regardless of how the Court construes these factual allegations, they do not prove breach of contract on the part of Brigham Young University. Therefore, the *Motion to Amend Complaint* is not adequately justified.

Second, any new allegations were not timely filed in a complaint. The most recent of plaintiff's new allegations occurred an entire year before plaintiff filed this *Motion to Amend Complaint*. This Court has the discretion to refuse to accept the amended Complaint after such an extensive delay. Further, it would be prejudicial to Brigham Young University to have to defend this complaint because no new cause of action is stated and the additional allegations are factually similar to those already alleged and are insufficient to prove a breach of contract.

Third, the issues in this case have been resolved. Plaintiff's complaint was dismissed and it is not in the interest of fairness or justice for the Court to revisit these issues.

For the foregoing reasons, the Court DENIES plaintiff's *Motion to Amend Complaint.*

Motion to Reconsider

A *Motion to Reconsider* is not provided for in the Utah Rules of Civil Procedure "and has never been recognized as a proper motion in this state." *Wisden v. Bangerter*, 893 P.2d 340, 342 (Utah 1980) (citations omitted). Plaintiff cited to Utah Rules of Civil Procedure 52(b) and 59(e) as the procedural support for his *Motion to Reconsider*. Therefore, the Court will consider this motion as a *Motion to Alter or Amend a Judgment* pursuant to Rule 59(e). Grounds for an amended judgment are irregularity in the proceedings of the court, misconduct of the jury, accident or surprise, newly discovered evidence, excessive or inadequate damages, insufficiency of the evidence to justify the verdict, or an error in law. Utah R.Civ.P. 59. In this case there were no irregularities in the proceedings. There was no jury and therefore no misconduct of the jury. There was no accident or surprise. As stated before, the new evidence presented is not material to this claim and could have been, with due diligence, discovered and presented to the Court before the complaint was dismissed. There is no issue as to excessive or inadequate damages because this case was dismissed at the pleadings stage. Finally, there was no error in law. As a matter of law, plaintiff did not state a claim upon which relief can be granted.

Plaintiff's Good Faith and Fair Dealing Argument

Plaintiff's claim that the implied warranty of good faith and fair dealing was breached is duly noted. Plaintiff suggested that this Court employ the covenant of good faith and fair dealing

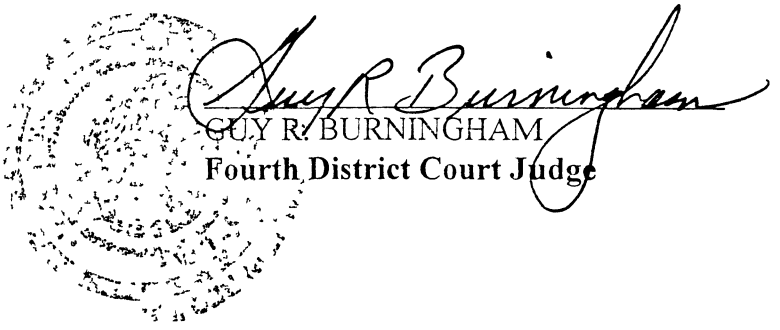
to imply a contractual obligation on the part of Brigham Young University to insure that BYU Police would not approach or apprehend plaintiff. However, a party's obligations under a contract "cannot be enlarged or expanded by means of the implied covenant of good faith and fair dealing to include other promises not fairly included in the promise actually made." *Jensen v. Redevelopment Agency of Sandy City*, 951 P.2d 735 (Utah 1997). Despite plaintiff's argument that the fact pattern of *Jensen* does not apply, the legal proposition for which it stands is good law and does apply to this case.

Plaintiff's Objection to the Order

Plaintiff further objected to the April 4, 2003 Order because "opposing counsel [] attempt[ed] to slip in two extra words – page 2 line 2 [-] that disallow plaintiff to pursue justice." The Court must assume plaintiff was referring to the words "with prejudice." The complaint was dismissed pursuant to Utah R.Civ.P 12(b)(6). Under Utah R.Civ.P. 41(b), an involuntary dismissal under Rule 12(b)(6) is assumed to be with prejudice unless the court specifies otherwise. *Alvarez v. Galetka*, 933 P.2d 987, 990-91 (Utah 1997). The Court did not specify whether the dismissal was with prejudice and, therefore, the assumption that it was with prejudice was properly made.

Plaintiff's complaint was properly dismissed, with prejudice, pursuant to Utah R.Civ.P 12(b)(6) for failure to state a cause of action upon which relief can be granted. The proposed Order reflected that holding and this Court DENIES plaintiff's *Motion to Reconsider.*

Dated at Provo, Utah this 22 day of May, 2003



GUY R. BURNINGHAM
Fourth District Court Judge

Case No. 020403144